IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2002
CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

C.R.P.NOs.1008 of 1998 AND C.R.P.NOs. 1041 OF 1998 AND C.M.P.NO.8796 OF 1999

1. S.V.Janardanam
2. S.V.Narasimhan ... Petitioners
in both C.R.Ps.
Versus

1. D.Kivraj Sowkar
2. Inderchand
3. I.Hanskumar .... Respondents
in both C.R.Ps.

Prayers: Civil Revision Petition No.1008 of 1998 filed against the judgment and decree dated 24.12.1997 and made in R.C.A.No.1 of 1996 on the file of the Subordinate Judge, Tiruvellore, reversing the Order and decree dated 22.11.1993 made in R.C.O.P.No.16 of 1993 on the file of the District Munsif (Rent Controller), Chinglepet.

Civil Revision Petition No.1041 of 1998 filed against the Judgment and decree dated 24.12.1997 made in R.C.A.No.2 of 1996 on the file of the Subordinate Judge, Tiruvellore reversing the order and decree made in R.C.O.P.No.17 of 1993 dated 22.2.1995 on the file of the District Munsif (Rent Controller), Chingleput.

! For Petitioners: Mrs.Chitra Sampath
^ For Respondents: Mr.P.Peppin Fernando

: O R D E R

C.R.P.No.1008 of 1998:

In the above civil revision petition, the petitioners challenges the order of the Rent Control Appellate Authority in R.C.A.No.1 of 1996 whereby the petitioners/ landlords were non-suited for the relief of eviction on the ground of requirement of the premises for owner's occupation under Section 10(3)(a)(i) and 10(3)(a)(iii) on the ground that the petitioners have not proved their bon a fide in respect of their requirement.

2. The petitioners are brothers and they purchased the demised property on 31.1.1993. The respondents/tenants are in possession and occupation of the building having three door numbers viz., 161, 162 and 1 63,

Gandhi Road, Sriperumbudur. Door No.162 is a residential premises and Door Nos.161 and 163 are non-residential premises. On 31.5.1993 , the petitioners/ landlords purchased the entire property. The first petitioner purchased the property bearing Door No.161 and a half share in property bearing Door No.162. The second petitioner has purchased the rest of the half share in the property bearing Door No.162 and the entire property bearing Door No.163 on the very same day. The respondents/tenants were in occupation and possession of the demised premises even prior to their purchase. Door Nos.161 and 163 are used by the respondents for the purpose of pawn broker business and Door No.162 is being used as a residential premises. The first petitioner has a wife and one son and the second petitioner has wife and son. All of them are living together along with their parents in a rented premises. The petitioners are not owning any other residential premises except the demised premises and as such, Door No.162, the residential building is required for their own use and occupation.

3. It is the further case of the petitioners that they are assisting their father in provision store business in a rented premises at No.158, Gandhi Road, Sriperumbudur. The first petitioner wanted to do a general store whole sale and retail business in the property bearing Door No.161. For that purpose, he has also applied to the Executive Officer, Sriperumbudur Town Panchayat for licence. He also applied to the Deputy Commercial Tax Officer for registering himself as dealer under the provisions of the Tamil Nadu General Sales Tax Act. Likewise, the second petitioner in addition to the requirement of the premises Door No.162 for the purpose of residential, also sought for premises No.163 for the purpose of doing business in plastic household articles and he has also taken steps for getting licence from the Executive Officer, Sriperumbudur Town Panchayat and also the Registration Certificate from the Commercial Tax Department. It is the further case of the petitioners that the respondents are owning building in the very same locality at Door No.66, Gandhi Road, which is a residential and a shop portion and it is vacant and ready for occupation. The respondents also own Door No.66A, Gandhi Road and let out to State Bank of India. There is a lot of space in the frontage. The said buildings are just a few metres away in the opposite side of the demised premises. With these allegations, they filed the application for eviction of the respondents herein.

4. That application has been refuted by the respondents on the ground that the petitioners' father owns two buildings. The petitioners are not really intended to shift their residence to Door No.162 and not really intended to start the business in Door Nos.161 and 163. The requirement is not bona fide. The premises in Door No.66, Gandhi Road is not fit to do any business and Door No.66A has been given in rent to State Bank of India. The petitioners and their family members are living comfortably in the premises in which they are living. The requirement of the residential as well as the non-residential premises by the petitioners is not bona fide.

5. However, when the R.C.O.P application before the Rent Controller has been taken up for orders, since the respondent did not lead any evidence, the Rent Controller ordered eviction. Against which, the respondents/tenants filed an appeal in R.C.A.No.1 of 1996 before the Appellate Authority. The

Appellate Authority directed the Rent Controller to record the evidence of the respondents and forwarded the same and on such evidence has been recorded and forwarded, the appellate authority allowed the appeal and dismissed the application on the ground that the requirement of the petitioner is not bona fide. The said order is now assailed in the revision petition before this court.

6. The learned counsel for the petitioners has assailed the order of the Appellate Authority in non-suiting the petitioner for the relief sought for as one passed not in accordance with law. The finding as arrived at by the Appellate Authority is so unreasonable and no authority under the Act would have reached such a finding on the materials available and the order of the Appellate Authority is founded on the ground which is not at all case of the respondents and as such it is a perverse finding. It is further contended that R.W.1, the 2nd respondent has admitted that the petitioners are doing business in a rented premises along with their father and a lso living in a rented premises. The petitioners proved rather the respondent himself admitted that the petitioners are not owning any residential premises of their own except the demised premises. It is also admitted by the respondent that the petitioners are not owning any non-residential building. The petitioners also adduced material evidence as to the steps that were taken to start the business of their own. The Appellate Authority presumed without any basis, that the petitioners did not have any intention to occupy the residential premises and as well to start their own business, which is a perverse finding.

7. The learned counsel for the respondents submitted that the order of the Appellate Authority is in consonance with the well settled principle that for invoking the provisions of Sections 10(3)(a)(i) and 1 0(3)(a)(iii), the requirement must be a bona fide requirement. On the materials made available before the authorities below, the authorities have come to the conclusion that the requirement of the petitioners is not a bona fide. For coming to such a conclusion, the authorities have relied on the evidence of the petitioners themselves that the petitioners own two other buildings and the factum of owning of two other buildings by the petitioners has been totally suppressed. By suppressing this vital material fact, they come forward with a petition for eviction of the respondents on the ground of bona fide requirement. Hence, the requirement of the petitioners cannot be considered as a bona fide, particularly, when P.W.1 admitted in his evidence that the petitioners are having two houses.

8. I heard the arguments of the learned counsel on either side and also perused the material on record.

9. The reasoning given by the Rent Control Appellate Authority for coming to the conclusion that the requirement of the petitioners is not bona fide is totally erroneous and there is no material to prove the same. The basis for coming to the conclusion that the requirement is not bona fide by the appellate authority is that the petitioner has admitted in their evidence, particularly, in the cross examination that they own two houses. But however on the entire reading of the evidence of P.W.1, there is nothing to suggest such an admission was made by P.W.1. What was elicited in the cross

examination was that the joint family of the father of the petitioners owns two houses and are also situated in Keezhathurai and not in that locality. When that being the factual position, the reasoning given by the Rent Control Appellate Authority to non-suit the petitioners on the ground that the requirement of the petitioners is not bona fide is unsustainable in law. The contention contra as contended by the learned counsel for respondents is unsustainable for the very same reason.

10. The case of the petitioners in their R.C.O.P petition as to the steps taken for obtaining the necessary licence for the conduct of the provision stores and the registration certificate under the provisions of the Tamil Nadu General Sales Tax Act in respect of the nonresidential building as well as the oral evidence to that effect to corroborate the case of the petitioners has been simply brushed aside by the Appellate Authority on the simple ground that those applications have been made subsequent to the filing of the suit by the respondents herein, and as such not a bona fide step taken for the purpose of establishing the business. This reasoning is also without any basis. It is an admitted fact as evidenced by the counter of the respondents that the petitioner has purchased the property on 31.5.1993, though the sale deed was executed as early as 31.1.1993.

11. The R.C.O.P was filed on 8.10.1993. The documents relied on the side of the petitioners were of the origin of September, 1993. Hence the documents as well as the corroborating evidence of the petitioners in support of the same would prove that bona fide steps have been taken to establish the business. The suit filed by the respondents would not militate the issue. Hence, I am not able to concur with the appellate authority.

12. What is required under the provisions of the Act is that the person, who seeks eviction of the tenant on the ground of Sections 10(3)(a)(i) in respect of residential premises and 10(3)(a)(iii) in respect of non-residential premises, has to prove that he is not owning any other property of the nature concerned and he requires the building for his own use and occupation. So far as the present case is concerned, these two ingredients have been proved to the satisfaction of the requirements of the Statutory provisions. It is the case of the petitioners in the petition that they have been residing along with their family in the rented premises with th e parents. That has not been denied or any contra evidence has been adduced to that effect. As a matter of fact, it has been admitted by the respondents themselves in the evidence that the petitioners are residing in a rented premises along with their parents. It is also further curious to note that in his evidence, the respondent says that the premises in which the petitioners are living for a quite long number of years with their father and as a matter of fact, the petitioners were born and brought up in the same premises. That by itself cannot be a reason to non-suit the petitioners. The petitioners now grown up and also they married and having children. In such circumstances, it is not for the respondents to say that the present residential building in which the petitioners are residing, though a rented premises, is convenient to the petitioners.

13. The other reason given by the Appellate Authority to non-suit the

petitioners for the relief sought for is that they are converting the property from residential to non-residential and it is not permissible under law. It is unfortunate how the appellate authority has come to the conclusion like that when it is not the case of either of the parties and no evidence was let in. When that being the position, this reasoning of appellate authority is also unsustainable and liable to be set aside as it is based on no evidence.

14. It is now well settled that when an application is filed under Section 10(3)(a)(i) and 10(3)(a)(iii) and the requirements of the provisions are satisfied, it is not for the tenant to say that the property is suitable or not suitable to the petitioners' requirement. Further when the landlord who owns the property filed an application under Sections 10(3)(a)(i) and 10(3)(a)(iii), the authorities under the Rent Control Act have to draw a presumption in favour of the bona fide requirement of the landlord. When such being the legal position and particularly when the requirement of the Section has clearly been made out in the petition, which has been corroborated by the oral testimony of P.Ws.1 and 2 and also further innocuously admitted in the evidence of R.W.1 to the effect that the petitioners are doing their business in a rented premises along with their father for the past ten to fifteen years, and they are having ex perience in doing business and they have purchased the property, they are not owning any other property of either nature, I am of the considered view that the requirement is only a bona fide requirement. The word "mala fide" is not a meaningless jargon. It has its own connotations. The mala fide intention has to be gathered from the entire reading of the petition as well as the evidence adduced in support of the case of petitioners. If so gathered as stated above, it has to be concluded that the requirement of the petitioners is bona fide.

15. There is another set of pleadings and evidence, which has been totally ignored by the Appellate Authority, is that the respondents are owning buildings in Door Nos.66 and 66A in the very same street just a few metres away in the opposite side of the demised premises and which part of the pleadings and evidence put forward by the petitioner herein has not been disputed. But that has been refuted in the evidence adduced on behalf of the respondents by saying that the building may not be suitable for their business. This aspect of the pleading as well as the evidence has been totally lost sight of by the Appellate Authority.

16. Further, this Court is conscious of the exercise of the revisional power under the Act. Since this court is of the view that the conclusion of the Appellate Authority is based on no evidence and perverse, the order impugned has to be necessarily interfered with.

17. For the above said opinion, I could very well draw the support of the decision of the Supreme Court in SARLA AHUJA VS. UNITED INDIA INSURANCE COMPANY LTD reported in 1998(III) C.T.C. 679, wherein the Supreme Court has declared the law thus:

"The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the

presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

18. The Apex Court further held that while exercising the power under the revisional jurisdiction, which is ordinary power of supervision and is intended to ensure that the authorities under the Act confirms the law when they pass orders. If the finding arrived at by the Rent Controller is so unreasonable, that no Rent Controller could have reached such finding on the materials available, while exercising the revisional jurisdiction, the High Court could interfere with the Order of the Rent Control Authority even if it is a concurrent finding.

19. The learned counsel for the respondents relied on the following decisions:
1. G.NAGARATHNAM VS. DISTRICT LIBRARY OFFICER reported in 1986(I) M.L.J. 327,
2. KANAKAVEL PILLAI VS. DRUGS AND CHEMICALS reported in 1989(II) M. L.J. 392,
3. SANKARAM, A VS. BALASUNDARAM, S.K. Reported in 1994-2-L.W.152.

20. In the first decision of G.NAGARATHNAM VS. DISTRICT LIBRARY OFFICER reported in 1986(I) M.L.J. 327, the document relied on so as to prove that the landlord has taken one step in the series of steps for running a nursery school, the landlord seems to have filed a pamphlet printed by her. In such a factual situation, this Court has held that it is not actually necessary to prove that "N" is carrying on a business, if she has taken one step in the series of steps for running a nursery school, her case could have been brought under Section 10(3)(a)(iii). But in this case, the only document filed to show that a step was taken, is Ex.P-5, a pamphlet which shows that a nursery school is run at No.39, Minor Trustpuram. This can hardly be said to be a step taken in the matter of commencing a nursery school. The facts of the present case are already elaborated, cannot at any stretch of imagination, be compared to the facts of the reported case.

21. The next decision KANAKAVEL PILLAI VS. DRUGS AND CHEMICALS reported in 1989(II) M.L.J. 392 is one in which a similar application has been rejected on the ground that the petitioner has stated in his application for eviction that his business is plastic industry, yet a perusal of his evidence on this aspect of the case reveals a vacuum of facts, in relation to the taking of necessary steps for commencement of the plastic business. It is not even stated that the petitioner had taken some steps towards securing either the licence for the purpose of commencement of the plastic industry or to secure the necessary machinery therefor.

22. So far as the present case is concerned, the petitioners have proved that they have taken steps for securing licence and also for registration certificate under the T.N. General Sales Tax Act. No machinery of any nature is required for doing a retail wholesale plastic articles shop or grocery shop. Hence, this decision is instead of advancing the case of the respondents, in a way, support the case of the petitioners since the petitioners have applied for licence.

23. In the third decision of SANKARAM, A VS. BALASUNDARAM, S.K. Reported in 1994-2-L.W.152, the landlord came forward with the petition for eviction on the ground the tenant has committed wilful default. In that application, it has not been suggested that the petitioners therein require the building for their own use. Hence, in the factual matrix of that case, the High Court has come to the conclusion that the petition under Section 10(3)(a)(iii) is not a bona fide requirement. But the facts are not similar in this case.

24. Hence, the Judgment of the Rent Control Appellate Authority dated 24.12.1997 and made in R.C.A.No.1 of 1996 on the file of the Subordinate Judge, Tiruvellore is set aside and the relief sought for in R.C.O.P.No.16 of 1993 on the file of the District Munsif (Rent Controller), Chinglepet is granted by allowing this Civil Revision Petition. However, there shall be no order as to costs. Consequently, the connected C.M.P is closed.

C.R.P.NO.1041 OF 1998

25. This Civil Revision Petition is filed for eviction of the tenant by the petitioner on the ground of wilful default for the period from June, 1993 to October, 1993 ie., 5 months.

26. As in the earlier case, this R.C.O.P has also been allowed by the Rent Controller. When that was taken on appeal, on the direction of the Appellate Authority, the evidence was recorded and forwarded to the Appellate Authority and the Appellate Authority has found that the respondents have not committed wilful default.

27. It is the contention of the learned counsel for the petitioners that for the period from June, 1993 to October, 1993, the respondent committed wilful default by not paying the rent.

28. On the other hand, the learned counsel for the respondents submitted that a sum of Rs.20,000/- has been paid as advance by the respondents to the vendor of the petitioners for the purchase of the property by fixing the sale consideration as Rs.80,000/-. When that amount is in the credit of the vendor of the petitioners, even assuming that the rent for the period from June, 1993 to October, 1993 has not been paid would not amount to a wilful default in view of the statutory condition that the landlord can keep only one month rent as advance besides the contention of the tenancy has not been attorned.

29. I heard the arguments of the learned counsel on either side and perused the materials on record.

30. The argument of the learned counsel for the petitioners that the respondents have committed wilful default for the period from June, 1993 to October, 1993 has to be accepted in my view. The respondents herein filed a suit in O.S.No.342 of 1993 on the file of the very same Rent Controller for injunction on the ground that the petitioners immediately after purchase of the property on 31.5.1993 indulged themselves in unlawfully evicting the respondents from the petition schedule property that they being in possession of the property, the respondents' possession should not be disturbed by the petitioners herein except under due process of law. The cause of action of the said suit is the purchase of the property by the petitioners. Even in the counter in the R.C.O.Ps, it is admitted by the petitioners the filing of the suit on the above said grounds. When that being the position, it cannot be said that the tenancy has not been properly attorned.
31. The further contention of the learned counsel for the respondents that the entire amount of arrears of rent has been deposited in the very same court of District Munsif in another proceedings in O.S. No.342 of 1993 also would not advance the case of the respondents herein. It is the statutory obligation cast upon the tenant under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act to pay the monthly rent every month as agreed. In the counter filed, it has been clearly admitted that the respondents came to know of the purchase of the property by the petitioners in the month of June itself. Hence, it is the bounden duty of the respondents to pay the rent to the petitioners. They did not do so. The respondents further filed an application only in November, 1993 to deposit the arrears of rent in the suit. This act of the respondents in filing a suit in June and depositing the amount of rent in the month of November, 1993 would not save the respondents from being found that they have committed wilful default.

32. Under Section 10 of the Act, a duty is cast on tenant to tender the rent to landlord. Rent becomes arrear if the rent is not tendered to landlord within 15 days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable. Section 8 of the Act deals with consequences where landlord refuses to issue receipt or refuses to receive the rent. Section 8(1) says whenever landlord receives any payment towards rent or advance, he shall issue a receipt duly signed by him for the actual amount of rent or advance received by him. Section 8(2) says that where landlord refuses to accept or evades the receipt of rent lawfully payable to him, tenant may by notice in writing, require landlord to specify within ten days from the date of receipt of notice by him, a bank into which the rent may be deposited to the credit of landlord. If landlord specifies the bank, tenant shall deposit the rent as and when it becomes due in that account till he gets further instructions of landlord. As per Section 8(4), if landlord does not specify bank, tenant is bound to remit the rent to landlord by money order, after deducting the money order commission. In spite of sending rent by money order, if landlord refuses to accept the same, tenant can deposit the amount in Court under Section 8(5) of the Act.

33. In the teeth of the above statutory provision, the contention of the respondents that the rents for the months of June, 1993 to October, 1993 deposited in the civil suit in November, 1993 would enure to the benefit of

the Rent Control Proceedings cannot at all be accepted. The deposit made not in compliance with the statutory provision cannot be considered as valid deposit.

34. The other contention of the learned counsel for the respondents that the advance amount of Rs.20,000/- paid for the purchase of the property, the amount has to be treated as advance for the tenancy has been raised only to be rejected for the simple reason this amount is not an amount paid as advance in respect of the tenancy and further it is not the case before the Rent Control Authority as projected by the learned counsel for the petitioners.

35. This court in the decision of T.GOPALSAMY AND ANOTHER VS. R. RANGANATHAN AND OTHERS reported in 2000(2) LAW WEEKLY 699 very categorically stated the procedure that would have to be followed by the tenant. The deposit made in the Civil Court cannot be considered as a deposit under Section 8(5) of the Rent Control Act in view of the clear dictum of the Supreme court in 1995 Supplement (1) S.C.C. 318, which was followed by this court in 2000(2) LAW WEEKLY 699. Hence, even under this ground also, the petitioners are liable to succeed.

36. For the above said reasons, I am of the considered view that the order of the Rent Control Appellate Authority which is now impugned in this civil revision petition is unsustainable in law and it has to be set aside and as such it is set aside and the relief of eviction is also granted in favour of the petitioners by allowing this civil revision petition. However, there is no order as to costs.

15.02.2002

Index:Yes/No
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To:
1. The Subordinate Judge,
Tiruvellore,

2. The District Munsif,
(Rent Controller)
Chingleput.

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K.RAVIRAJA PANDIAN,J.

C.R.P.NO.1008 and 1041
of 1998

15.02.2002 □